

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/154,646 09/17/98 CUPP

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EXAMINER

HENDRICKS,K

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

01/02/01

Please find below and/or attached an Office communication concerning this application or proceeding.**Commissioner of Patents and Trademarks**

Office Action Summary	Application No.	Applicant(s)
	08/154,646 Examiner	Group Art Unit 17e1

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 10-20-00.

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1 - 24 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-20 & 24 is/are rejected.

Claim(s) 21-23 is/are objected to.

Claim(s) _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other _____

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DETAILED ACTION

Remarks

In the previous Office action, it was noted that the references and impending rejections were discussed with applicants' representative on May 22, 2000, as well as suggestions for amending the claims, but did not result in an agreement at that time. Applicants' representative acknowledged the conference, stating that the examiner suggested limiting the claims to "at least 2% by weight" of the product being insoluble fiber, and amending claim 24 to include a humectant, the claims would be allowable over the prior art. To clarify the record, the conversation took place prior to the Office action (Paper #8, August 15, 2000), which provides several claim rejections. Applicants must address each rejection as it appears in the previous Office action. Further, as noted below, "at least 2%" insoluble fiber is not supported by the specification, nor was this suggested anywhere in the Office action. Thus a possible misunderstanding may have occurred during the months between the conversation, the Office action, and the time following the Office action until response. It is noted that the specification and previous claims support language directed to "about 2% to about 15% by weight of insoluble fiber", but not any amount above "at least 2%".

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 1,13,20 and 24 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicants' amendment of October 20, 2000, introduces new matter to the claims, which is not supported by the teachings of the original specification. It is noted that the specification and previous claims support language directed to "about 2% to about 15% by weight of insoluble fiber", but not any amount above "at least 2%". Correction and deletion of the new matter is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-7, 13-15 and 18-24 are rejected under 35 U.S.C. 102(b) as being anticipated by Gellman et al.

Applicants' arguments filed October 20, 2000 have been fully considered but they are not persuasive. At pages 2-3 of the response, applicants state that "Gellman does not disclose adding at least 2% by weight insoluble fiber to a pet food product." This is not deemed persuasive for the reasons of record, as namely, applicants' specification also does not disclose adding at least 2% by weight insoluble fiber to a pet food product, and thus the limitation cannot be properly maintained within the claim.

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Applicants further state that "Gellman does not specifically teach the use of insoluble fiber." However, this point is not deemed persuasive, and had been addressed previously on the record (pg. 3, previous Office action). Specifically again,

Insoluble fiber is not specifically mentioned as an ingredient; however, the farinaceous materials described at column 10 naturally contain some amount of fiber. For example, wheat generally contains 2.3- 5.6% total dietary fiber, with 1.7% of that insoluble, including cellulose. Corn flour has 15% insoluble fiber, including cellulose. (pg. 481, 484. Lorenz et al. "Handbook of Cereal Science and Technology", Dekker Press, 1991). Although this does not reach the threshold of "about 2% to about 15%" (instant claims 4-5,8-12,16-17), the instantly-rejected claims are anticipated by the reference.

Claims 1-20 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Simone et al.

Applicants' arguments filed October 20, 2000 have been fully considered but they are not persuasive. At page 3 of the response, applicants state that "Simone discloses that the moisture content of the product disclosed therein is preferably at least 12% by weight or greater", while each of applicants' claims "requires a moisture content of less than 10% by weight." Applicants also misquote the reference and Office action by stating that "a level of 10-30% by weight" would not read upon the instant claims. This is not deemed persuasive for the reasons of record. Initially, it is not agreed that Simone teaches that the moisture content must be "at least 12% by weight", or even "a level of 10-30% by weight". In fact, this point was specifically addressed at page 4 of the previous Office action.

Simone et al. teach that the moisture content of the final product can be dried "to adjust the moisture level to about 10 to about 30% by weight" (bottom of column 5, col. 7, lines 19 and 27 as "dried" thereafter).

As the teaching of "about 10" percent moisture by weight includes percentages immediately above and below 10%, and at the very least, below 12% as purported by applicant, the claimed invention

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is anticipated by the reference. The preferred percentages of the exemplified product of Simone et al. do not detract from the broader recitation specifically recited within the same reference, which provides a functional product which overlaps with the instantly-claimed invention.

Conclusion

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached at (703) 308-0756. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



KEITH HENDRICKS
PRIMARY EXAMINER